IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7498 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VERAVAL PATAN JOINT MUNICIPALITY - Petitioner(s)

Versus

LAXMIBEN NARAN & 8 - Respondent(s)

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Appearance :

MR RM CHHAYA for Petitioner No(s).: 1.

MS DEVYANI N DAVE for Respondent No(s).: 1.
MR BJ TRIVEDI for Respondent No(s).: 1.
MR JT TRIVEDI for Respondent No(s).: 1.
None for Respondent No(s).: 2, 3, 4, 5, 6, 7, 8,9.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 09/08/2005

ORAL JUDGMENT

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1.0 The petitioner Municipality has challenged the award

dated 05.09.1998 passed by the Labour Court, Junagadh in Reference (LCJ) No. 1829 of 1990, whereby the said reference was allowed.

2.0 The short facts of the case are that the respondents herein were employed as daily wage Malis (Gardeners) by the petitioner Municipality between 1986 to 1988. After 1988, since the services of the respondents were not required they were discontinued from the service by the petitioner. Against the said action, the respondents raised disputes, which, ultimately, culminated into references before the Labour Court, Junagadh.

2.1 The Labour Court by impugned award directed the petitioner Municipality to reinstate the respondents on the original post and also ordered to construe the period as continuous service and to give back wages along with all consequential benefits. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. On 03.11.1999 it was clarified by this Court that the present petition is being entertained with respect to respondent no.1 only and that the petitioner shall be at liberty file separate

petitions against rest of the respondents. It is stated that respondent no.1 is already reinstated in service by the petitioner Municipality on 09.08.2000. Hence, the impugned award of the Labour Court qua granting respondent no.1 reinstatement in service is confirmed. Since respondent no.1 is already reinstated in service, he shall also be entitled for the benefits of continuity of service. The petitioner Municipality shall also give the benefit of seniority to Respondent no.1 in the cadre of daily wagers.

4.0 So far as the direction with regard to grant of back wages is concerned, it is required to be noted that the Labour Court has given the benefit of doubt to respondent no.1 while awarding back wages. No cogent reasons have been given by the Labour Court while awarding the same. Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1 In the case of General Manager, Haryana Roadways v.

Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua granting respondent no.1 back wages is required to be quashed and set aside.

5.0 For the foregoing reasons, this petition is allowed. The impugned award of the Labour Court qua granting respondent no.1 reinstatement with continuity of service is confirmed; and, the direction qua awarding back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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